



MICHIGAN TRIAL LAWYERS ASSOCIATION

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April 17, 2006

Via E-Mail

The Honorable William VanRegenmorter
State Representative, District 74
State Capitol
P.O. Box 30014
Lansing, Michigan 48909-7514

Re: April 18, 2006 House Judiciary Committee Hearing
Self Defense Litigation Bills (HBs 5142, 5143, 5153, 5548)

Dear Representative VanRegenmorter and Members of the House Judiciary Committee:

The Michigan Trial Lawyers Association wishes to express significant concern over two provisions of the self-defense rights/duties package.

LOSER PAYS PROVISIONS - (HB 5143(4), 5153(4) and 5548(2))

The three cited sections of this package all impose the English system of loser pays attorney fees, as well as the defendant's loss of income and actual expenses incurred in a lawsuit that results in being barred by these Acts. The central factual issue in an assault and battery case is nearly always the question of who was the aggressor and who was entitled to utilize self-defense. These cases arise in the context of assaults among family or friends, in private homes, assaults in public places including shopping malls that may involve security guards, in bars among patrons and/or bouncers, parking lots, and every other imaginable location. Frequently, the facts are murky and the damages can be great.

The loser-pays provisions will have a chilling effect on legitimate claims for recompense for serious damages resulting from wrongful assaults. The risk of paying an opponent's attorney fees (or the attorney fees of his/her insurance company, if applicable) amounting potentially to tens of thousands of dollars would loom too large for the average individual.

Overly aggressive bar bouncers, poorly trained security guards, and other aggressors who unlawfully assault innocent people will largely be given free reign for their actions, at the expense of their victims, as it would be too risky to hold them civilly accountable.

The question of who is the aggressor and who is the victim is frequently a very close factual call that is exactly the type of question that the jury system is best suited to resolve. The existing rules allowing a judge to award attorney fees for frivolous lawsuits are sufficient to handle the cases that clearly should not be filed.

DEADLY FORCE TO PROTECT THIRD PERSONS - (HBs 5143 and 5153 – Sections 1(3), 2(2)(a), and 3(2))

The provisions allowing the use of deadly force to protect a third person also raises substantial concern. The loser pays provisions, in conjunction with Section 1(3), Section 2(2)(a), and Section 3(2) of HBs 5143 and 5153, immunize the “protector” for his or her deadly force in the protection of a third person. The Acts give blanket civil and criminal immunity and does not apply any reasonableness standard in the utilization of such force.

This becomes problematic in the following hypothetical situation: A “protector” lawfully carrying a concealed handgun while walking down Main Street in Ann Arbor, or in a busy shopping mall, perceives an individual being robbed at gunpoint 100 yards away. The “protector” is licensed to carry a gun, but is not a very proficient shot, and decides to “save the day” and fires several shots with the best intention of saving the robbery victim, but his shots wildly misses the mark and kills a mother and her child strolling down the opposite side of the street. It is possible that the protector’s use of the handgun at 100 yards on a busy street or in a busy mall would be considered unreasonable or negligent, yet the mother and child’s family would have no recourse for civil compensation under these bills because of the absolute grant of civil immunity in light of the protector’s true intention of saving the perceived robbery victim. We do not believe that this is a just or sound policy, or in the best interest of the protection of the citizens of Michigan.

We would appreciate the opportunity to work with you and your community in the progress of these Bills. We request that the loser pays provisions be deleted in its entirety, or that the attorney fee provision be made discretionary with the Judge and that there be a reasonableness standard imposed upon the “protector’s” use of deadly force.

Thank you for your courtesy and consideration.

Very truly yours,



David E. Christensen
MTLA Executive Board Member

DEC/rn

Cc: Representative Stephen Adamini, House Judiciary Committee
Representative Steve Bieda, House Judiciary Committee
Representative Paul Condino, House Judiciary Committee
Representative Kevin Elsenheimer, House Judiciary Committee
Representative David Law, House Judiciary Committee
Representative Sandy Lipsey, Minority Vice-Chair, House Judiciary Committee
Representative Bill McConico, House Judiciary Committee
Representative Gary Newell, House Judiciary Committee
Representative Mike Nofs, House Judiciary Committee
Representative Tory Rocca, House Judiciary Committee
Representative Tonya Schuitmaker, Vice-Chair, House Judiciary Committee
Representative Virgil Smith, House Judiciary Committee
Representative John Stakoe, House Judiciary Committee